

**APELLATE COURT CASE NUMBER A10-1622
STATE OF MINNESOTA
IN COURT OF APPEALS**

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KENT L. HENRICKSEN,

APPELLANT,

VS.

**TOWN BOARD OF KERRICK, MN.
AND MARK SAGVOLD,**

RESPONDENT,

AND CHERYL ASHMORE,

RESPONDENT,

APPELLANT'S BRIEF AND ORDER

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ATTORNEYS FOR RESPONDENTS

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Issues to be Raised in Appeal....

1. The proper definition of an “Affected Landowner”?
2. The Infringement of the Courts order limiting the Constitutional Right of the Appellant to *Due Process* under the 14th Amendment of the United States Constitution, by not informing Appellant of the action the Board was taking against his long established right to access his property!

The authority of the Town Board to instigate a ‘Vacation of a town road’ when its interests had been previously surrendered under the doctrine of Abandonment by Estoppel.

4. The failure of the Court to address the proper procedures as specifically outlined in Minn Stat 64.07 , Subd. 2.
5. That statements accepted by the court on behalf of the respondents are simply false and misleading in their context and use, without any documentation or first hand knowledge submitted, and that statements made by Appellee were completely ignored even though their was written documents provided, with Appellee’s oral statements based upon true-life experience and participation!

STATEMENT OF THE CASE

The situation is quite simple, made difficult by the actions and in-actions as taken by the Town Board of Kerrick, Minnesota, That the Board accepted a non-petition on February 7th, 2003, and presented it for action just a few days later on February 20th, 2003.

That the Board decided to act to vacate roads, streets, and alleys lying within the Townsite of Duquette, Minnesota, an unincorporated entity, without determining first whether they had any 'authority' to do so. (See doctrine of *Abandonment by Estoppel*, App 73 No.3). As the facts as developed by all parties and as upheld and agreed with by the 10th Judicial District Court, July 14th, 2010 (103-109) order.

That the Board had not maintained (or expended any township funds) nor shown any interest in doing so for a period exceeding 50 years, (more like 56-97 years) if ever for the original platting of the townsite by Frank Duquette (App 53).

That the Appellant the successor in title to this property through purchase from his Father's estate in 1987 and his previous purchase from the Duquette School District No. 18, in 1956, and their purchase from one private individual Mr. John Lingren in the year 1921 (May 31st), and his purchase just four months previous from the Duquette family occurring on January 18th, 1921! (See App's 62-65):

That 'the property' (schoolhouse acres) purchased by the School Board from Mr John Lingren was created as a 'landlocked' parcel out of a much larger parcel all of which Mr Lingren owned personally (App 50). That the School Board built their new school building on this parcel, and immediately created a right-of-way for access over the adjoining property owned by Mr. Lingren, by usurping a 50' wide lane via the

Doctrine Easement Appurtenant just East of ‘the property’ parcel as purchased, and running South from the then existing County Access Road #30, which ran East – West along the Section line of Sections 24 to the South and Section 13 to the North (App 59) until it met with the easterly end of the platted right-of-way of 3rd street in the Townsite of Duquette, and then west to its junction with the established roadway called DeLong Avenue, which eventually became County Highway #47 and the closest hardtop road servicing ‘the property’ from approximately 1952, and which was reconfigured in 1974 by the Pine County Highway Dept. by passing the Easterly portion of County Access Road #30 (see App 55A). Which ‘the township’ claims to have abandoned. (See App 3, No. 10, & No. 11).

The access route that the School Board created as a viable, an active access route To its ‘landlocked’ property, provided access for 35 years to “the property’ allowing the school to educate the local population from not only Kerrick Township, but also Nickerson Township, to the East, and according to the Pine County Historical Society (See App88-89) other families and population from surrounding townships. It also provided a route to bring all the materials of which the school building was constructed, a safe-secure environment, for its attendees, as well as a community gathering place, even held many Township Board Meetings when the seasons became winter (See App 61 – Sale Advertising Brochure – 1955!).

That School Board created the roadway, with its funds, maintained said roadway By itself for over 35 years, that the Township Board as they so proudly state (See 25 D.) did nothing to help with the maintenance or snow removal since its creation in 1922!

no interest was ever shown, and none was claimed by the Township Board so after 97 years they decided to take an action they have always deferred from and therefore are barred from taking any action under the Doctrine of Abandonment by Estoppel. (See App 73, No.3).

That the Respondent Town Board according to its own statements and belief never Intended to maintain this roadway as constructed by the Appellants predecessor (See

That the Appellant filed a legal action in a timely manner upon finding the Respondent Ashmore was and intended to continue blocking his legally obtained access route after eighty (80) plus years of continuous use!

STATEMENT OF THE FACTS

That the appellant, Kent L. Henricksen, brought this case against the Respondents due to the lack of understanding that the actions they had initiated in February 2003 were unlawful and extremely detrimental to the interests of Appellant.

That the trial court erred in finding for the Respondents because it found the following to favor the Respondents even though a thorough analysis of the facts would show otherwise

1. The Court found that the Respondent Kerrick Board had not maintained, nor shown any interest in the platted roadway parcels making up the Townsite of Duquette, Mn. (App 103, No. 7).
2. The Court found that the Townsite of Duquette was an incorporated entity and Therefore lies within the Kerrick Township. (App 105 No. 4).
3. The Court found that no notice was served upon the Appellant, even through Appellant's predecessors had established *Adverse Possession* . (App 106, No. 16)
4. The Court also found that Appellant had not been notified per Mn. Stat. 164.07 & Mn. Stat. 505.14 (App 's 106, No. 16)....
5. The Court found that the Appellant needed to be an 'abutting landowner' (App 106, No. 16)...
6. That the Court found that the Resolution and Order as filed with the County Recorder contained a 'Petition', (App 105, No. 9) .
7. The Court doubted the ownership of the Appellant, even though Appellant provided Recorded documents showing otherwise. (App 104, No. 3).
8. The Court found that the township needed to make a resolution in order to be responsible for any maintenance of any existing roadway(s). App 106, No. 20).

ARGUMENT

1. STANDARD OF REVIEW

The decision of the trial court denying Kent Henricksen motion to prevent the Town Board of Kerrick and Ms. Cheryl Ashmore action to stand because it was and is barred by the operation of the Doctrine of Abandonment by Estoppel and Mr. Henricksen's claim to possession of the effective right-of-way by the Doctrine of Adverse Possession must be reviewed by this court *de novo* as these are questions of law..See *Care Inst., Inc.-Roseville v. County of Ramsey*, 612 N.W..2d 443, (Minn 2000) and *G.A.W., III v. D.MW.*, 596 N.W.2d 284., 287 (Minn. App 1999).

2. THE TRAIL COURT ERRED IN FAILING TO CONCLUDE IN FAVOR OF PLAINTIFF'S POSITION THAT HE AS SUCCESSOR IN TITLE TO THE DUQUETTE SCHOOL BOARD HAD A CLAIM OF ADVERSE POSSESSION TRANSFERED TO HIM UNDER MN STATUE 541.02. (See App 127).

That said Adverse Possession occurred on lands that at the time were privately owned by John Lingren, the previous title holder (see App 50) dating from June 1st, 1921 and continuing consecutively to the present time from title holder to successive title holder. That the predecessor (Duquette School Board) did qualify under all provisions set forth in the appropriate statues (Mn Stat 541.02), (App 127

- a) Continuous, (*Costello v Elson*, 46 N.W. 299, (Minn 1890), b) Hostile, (*Holy-Kinney v Thaler*, MN Ct of Appeals 07/02/2010, c) Paid taxes (School District being a tax-exempt Entity, *Bend v Hick*, 1993, d) Open use *Heckem v Bender*, 500 N.W. 24d 169, Mnn Ct of Appeals 1993, e) Exclusive Use, *Menil v Scherden* 228 N.W. 755 (Minn 1930) & *Ehle v Prosser* 197 N.W.2d 48 (Minn 1972) (See Table of Authorities pg2.)

2. THE TRAIL COURT ERRED IN FINDING NOT TO CONCLUDE IN FAVOR OF PLAINTIFF'S POSITION THAT THE RESPONDENTS HAD NO AUTHORITY TO PROCEED IN AN ACTION TO IMPLEMENT MN STAT. 164.07. THAT RESPONDENT, TOWN BOARD, HAD PREVIOUSLY ASSIGNED THEIR INTEREST TO THE DUQUETTE SCHOOL BOARD:

A) That after the School Board had usurped a right-of-way in which to access its recent purchase of a 'landlocked' parcel it created a roadway over said 'usurped land', to connect with the two, at the time, established roads. 1) Being the East-West access route known as County Access Road #30, running between Sections 24 & Section 13; 2) Delong Avenue (itself just two blocks long) and State Highway #23, the main road running Northeast to Duluth, and Southwest to greater Minnesota. (See App 50).

That the above mentioned roadway was created during the schools construction period starting in 1921, and continuing with its completion in the fall of 1922, the School Board approached the Kerrick Township Board to get them to come aboard to create a partnership in finishing the roadway They Acquiesced somewhat by agreeing to declare a township Road In November, the 4th, 1922, but in the same paragraph declined to provide any financial help, no grading, no maintenance or snowplowing, but Agreed to let the School Board maintain the roadway with its **OWN** resources! See App 59.)

B) That the Respondent Board did not provide any oral or written documents showing any maintenance efforts, during the 96 years of the existence of the townsite of Duquette, or from 1921 to the presence on either the platted parcel known as 3rd Street, or Schoolhouse Road.

3. THE TRAIL COURT ERRED IN NOT FINDING IN THE APPELLANTS

FAVOR THAT HE WAS DISCRIMINATED AGAINST BY THE RESPONDENTS BECAUSE HE WAS NOT AN 'ABUTTING' LAND OWNER, BUT IN FACT WAS 'THE DOMINANT' LAND OWNER!

- A) That a party such as the Appellant, as the owner of property within less than a quarter mile from the proposed vacated roadway and one who holds title to said right-of-way via his purchase of title from predecessor owners who passed all their rights as obtained by the previous title holders, and their attainment of said access via their long 'adverse possession' as discussed previously should have been notified! Appellant claims this right also under his rights under The U.S. Constitution's, Fourteen Amendment, and the Due Process Clause, there contained. (see App 41-42, Addendum E) Also Mn Stat. 164.07 alludes to this right 'as personal service" and the Appellant brought this up and discussed it thoroughly in his original brief, (See App 38, para 4., b) and extensively at the hearing held on April 28th, 2010. (See App 29, para2;App 32, para1, line 6-9).**
- B) That the court found that the Appellant had a right to access his property by going South to reach the now existing 'frontage road' (See App 105, para 5) but this course actually leads only to State Highway #23,**

(See App 54 and App 55 dtd 1937 & 1980 neither showing any reference to a 'frontage road'), nor any road bed to traverse this distance except by the already established Schoolhouse Road via 3rd Street right-of-way thence South via DeLong* Ave. (now County Road #47) to court created 'frontage road' and then to State Highway #23* the only 'hard road(s)*, as alluded to in the School Boards advertising brochure promoting the sale of 'the property' in the mid-fifties. (See App 61). See also App 105 'the trail', existed as established by the School Board and recognized by The Kerrick Township Board in 1922! (See App 58 & 59).

- C). Respondents main defense refers to 'other means of accesses but Appellant has not established any legal right to traverse over someone else's private property, as all of these supposed accesses have been abandoned by the Township through the years (all more than twenty-five ago) and have been returned to the underlying property owners! Through the Statutes covering Abandonment! (See App 105, No. 5)**
- D. That Respondent Town Board has maintained throughout (See App 105, No. 7) that it never has had any interest or intent to create any of these platted roadways.**
- E. That Respondent Town Board clearly shows its true belief in (App 119, No. 4, para2, dated 09/22/2010), wherein 'cannot be made to maintain a Road it *abandoned* more than twenty-five years ago'...In reality it was 1921 or 1931! That in an aside, Respondent Ashmore does not even**

Know first hand about the condition of the former County Access Road #30, and the Affidavit of resident, Ms. Gunderson is not factual as to her traveling (inference is by vehicle traffic), when she only walks said roadway, which can only carry recreational toys, such as snowmobiles, trail bikes, ATV's, and similar such toys! The same goes for the route north from the 'frontage road' access; it's purely recreational with no-established roadway or legal description!

THAT THE TRAIL COURT FAILED TO ACCURATELY REFLECT THE FACTS IT DETERMINED REGARDING THE FOLLOWING:

EASEMENT APPURTENANT- (See App 56 & 120)....

ABANDONMENT – See App 124 & 83, C, para 1,)

ESTOPPEL – See App 83, C, para2; App 84 para1-3.)

COMMENTS ON CASE LAW: Schacht, et al, v Town Board of Hyde Park-

That Respondent Town Board relies on this case as supporting their cause, but in fact the decision went for the Schachts, even though they had a property that actually provided direct access to a established roadway, but was very difficult to access as well as costly! Appellant is not and has not asked the Township for anything, except to stay out of the way, and let the Appellant continue to enjoy the access route as bequeathed to him via title transfer and all the inherent rights so transferred, including an access route, legally established in 1921 and continued from that date to the present! (See App 15-16)

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Wherein it states: "Abandonment is the relinquishment, renunciation, and/or surrender of a right"

Kladio v Melberg, 210 Iowa 306,308, 227 N.W. 833, 835 (929)

Wherein it states: Abandonment involves an interest and purpose to surrender
The right acquired, accompanied by acts indicating that purpose and intent.

That 'the Board' lost its authority to proceed with a '*vacation of roadway procedure*'
Under the *Doctrine of Abandonment by Estoppel* through its own *In-Action* when it
continuously failed to maintain, or show any interest in these roadways from their
reception in 1906 to 2003 a period of time exceeding the 50 (fifty) years they claim
and by far more than what is needed to have the *Doctrine of Abandonment by*
In-Action as well as being *Estopped* from further action such as the 'road vacation
procedure' instigated!

CONCLUSION

This judgment in favor of Respondents, Kerrick Town Board and Ms. Cheryl Ashmore should be reversed and the trial court be directed to enter judgment for Appellant, Kent L. Henricksen.

That the court should indicate to the trial court that costs and disbursements be awarded, as well as punitive damages be assessed!

Respectfully submitted,

Dated:
November 15, 2010


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